

**Plaintiffs' Memorandum in Opposition  
to Joint Motion for Summary  
Judgment for Failure to Prove Fault  
Element of Public Nuisance Claims**

**Ex 6 – Zimmerman Tr. (8-3-18)  
Excerpts**

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF OHIO  
3           EASTERN DIVISION

4                               -   -   -

5   IN RE:   NATIONAL               :   MDL NO. 2804  
6   PRESCRIPTION OPIATE       :  
7   LITIGATION                   :

8   -----

9                               :   CASE NO.  
10   THIS DOCUMENT               :   1:17-MD-2804  
11   RELATES TO ALL CASES:

12                               :   Hon. Dan A.  
13                               :   Polster

14                               -   -   -

15                               Friday, August 3, 2018

16                               -   -   -

17   HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER  
18   CONFIDENTIALITY REVIEW

19                               -   -   -

20                               Videotaped deposition of  
21   CHRISTOPHER ZIMMERMAN, taken pursuant to  
22   notice, was held at the law offices of  
23   Reed Smith, LLP, Three Logan Square, 1717  
24   Arch Street, Suite 3100, Philadelphia,  
25   Pennsylvania 19103, beginning at 9:00  
26   a.m., on the above date, before Amanda  
27   Dee Maslynsky-Miller, a Certified  
28   Realtime Reporter.

29                               -   -   -

30

31

32

33                               GOLKOW LITIGATION SERVICES  
34                               877.370.3377 ph| 917.591.5672 fax  
35                               deps@golkow.com

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1 BY MR. PIFKO:  
2 Q. I've just handed you what's  
3 marked as Exhibit-1, which is a first  
4 notice of deposition under Rule 30(b)(6).  
5 It's got some topics on  
6 here, there are page numbers under there.  
7 The topics start on the bottom of the  
8 page, Page 6.  
9 Do you see that?  
10 A. Yes.  
11 Q. Have you seen this document  
12 before?  
13 A. I don't believe so.  
14 Q. Have you seen these topics  
15 before?  
16 A. Let me take a quick look at  
17 them.  
18 Q. Sorry?  
19 A. I'm reading through these  
20 real quickly.  
21 Q. Just for housekeeping, we  
22 didn't go over that, but there are,  
23 again, I'm sure your counsel told you  
24 some of these things in preparing for the

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1 depo, but there's a couple of ground  
2 rules that we have to remember because  
3 we're on the record here. Try to  
4 annunciate clearly if you're providing an  
5 answer, give an audible response and  
6 don't say words like uh-huh and uh-uh  
7 because when you read it on the  
8 transcript, you can't tell if it's a yes  
9 or no.  
10 Understood?  
11 A. Yes.  
12 Q. So you're reviewing the  
13 document right now?  
14 A. Yes.  
15 Q. To be clear, my question was  
16 if you had seen these topics before,  
17 which start on Page 6, and they're  
18 lettered A through O.  
19 A. Yes.  
20 Q. You have seen these topics  
21 before?  
22 A. I have.  
23 Q. Okay. When was the first  
24 time you saw these?

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1 A. A couple of weeks ago,  
2 maybe.  
3 Q. And are you prepared to  
4 provide testimony on behalf of the  
5 company with respect to these topics?  
6 A. Within a certain time frame,  
7 yes.  
8 Q. I understand the time frame  
9 goes from -- up until the end of 2014; is  
10 that correct?  
11 A. Correct.  
12 MR. NICHOLAS: Just for the  
13 record, just one of these topics,  
14 Topic O, is one which I believe  
15 there's an agreement among counsel  
16 that we will respond to in writing  
17 as opposed to in testimony here  
18 today.  
19 MR. PIFKO: Well, we can  
20 meet and confer, but I don't  
21 intend to take testimony on that  
22 topic today in any event.  
23 MR. NICHOLAS: Well, just to  
24 be clear, though, I think there's

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1 an agreement that we're responding  
2 to this in writing.  
3 MR. PIFKO: I'm not aware of  
4 such an agreement. I'm not  
5 disputing -- or I'm not taking a  
6 position.  
7 MR. NICHOLAS: Okay.  
8 MR. PIFKO: But we can be  
9 clear that that's not part of the  
10 deposition today, however we end  
11 up handling it.  
12 MR. NICHOLAS: Okay.  
13 BY MR. PIFKO:  
14 Q. And so you understand that  
15 you're also being deposed here in your  
16 individual capacity as well.  
17 Do you understand that?  
18 A. Yes.  
19 Q. For the most part, you can  
20 imagine, the company is made up of many  
21 individuals, and so it's hard to have  
22 someone speak for the company.  
23 So what we do in these  
24 situations is we have these topics and

<p style="text-align: right;">Page 18</p> <p>1 you, right now sitting in that chair for  2 the purpose of this case, are  3 AmerisourceBergen with respect to these  4 topics.  5 Do you understand that?  6 MR. NICHOLAS: Object to the  7 form.  8 You can answer.  9 THE WITNESS: Yes, I'm going  10 to be speaking on these topics.  11 BY MR. PIFKO:  12 Q. And from time to time, I  13 might be asking, does AmerisourceBergen  14 do this or that? And you'll be  15 answering, you know, so long as it's  16 within the scope of these topics, you'll  17 be answering on behalf of the company.  18 Do you understand that?  19 MR. NICHOLAS: Same  20 objection.  21 But go ahead.  22 THE WITNESS: Yes, I'll be  23 answering questions.  24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 20</p> <p>1 for identification.)  2 - - -  3 BY MR. PIFKO:  4 Q. It's marked as Exhibit-3,  5 which is the notice that calls us here  6 today.  7 And it also, in addition to  8 calling for your 30(b)(6) testimony, it  9 calls for your individual testimony as  10 well.  11 A. Okay.  12 Q. Are you familiar with The  13 Controlled Substances Act?  14 A. Yes.  15 Q. How long have you been  16 working at AmerisourceBergen?  17 A. Since January 1990.  18 Q. And you are currently senior  19 vice president, chief compliance officer?  20 A. Correct.  21 Q. And you're also senior vice  22 president in charge of the -- what's your  23 exact title for the aspect of the company  24 that deals with compliance with the CSA?</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. And you understand that  2 you'll be answering them on behalf of the  3 company? That's what I'm trying to get  4 at.  5 MR. NICHOLAS: Same  6 objection.  7 You can answer.  8 THE WITNESS: It depends on  9 whether it's as I'm representing  10 the company. You also indicated  11 I'll be answering questions for  12 myself.  13 BY MR. PIFKO:  14 Q. But with respect to these  15 topics, you understand that for the date  16 range we discussed, you'll be answering  17 on behalf of the company?  18 A. Yes.  19 Q. Okay. And then I just  20 handed you what's marked as Exhibit-2.  21 - - -  22 (Whereupon, Amerisource  23 Bergen-Zimmerman Exhibit-3, Notice  24 of 30(b)(6) Deposition, was marked</p>	<p style="text-align: right;">Page 21</p> <p>1 A. So I'm senior vice president  2 of corporate security and regulatory  3 affairs.  4 Q. And you guys called that  5 CSRA within your company?  6 A. That's the abbreviation,  7 yes.  8 Q. So if I use the term "CSRA,"  9 you understand what that means?  10 A. Yes.  11 Q. AmerisourceBergen is a  12 registrant under The Controlled  13 Substances Act, correct?  14 A. We are a DEA registrant,  15 correct.  16 Q. Have you ever heard the  17 term, I think -- I'm from California, we  18 drive a lot there, there's a phrase they  19 use that says, driving is a privilege,  20 not a right.  21 Have you ever heard that  22 kind of a phrase before?  23 A. Not really.  24 Q. AmerisourceBergen sells</p>

<p style="text-align: right;">Page 22</p> <p>1 drugs, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Included among those drugs</p> <p>4 are controlled substances, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And it's AmerisourceBergen's</p> <p>7 position as a registrant that allows the</p> <p>8 company to sell controlled substances,</p> <p>9 correct?</p> <p>10 MR. NICHOLAS: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: We have a</p> <p>13 controlled substance registration</p> <p>14 that allows us to distribute.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. And absent that</p> <p>17 registration, it's not legal for</p> <p>18 AmerisourceBergen to sell controlled</p> <p>19 substances, correct?</p> <p>20 A. Correct.</p> <p>21 Q. So do you understand that</p> <p>22 along with the privilege and the right</p> <p>23 to -- the ability to sell controlled</p> <p>24 substances, certain duties are attached</p>	<p style="text-align: right;">Page 24</p> <p>1 THE WITNESS: Can you say</p> <p>2 your question one more time?</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. The ability to sell</p> <p>5 controlled substances also comes with</p> <p>6 certain obligations that you must follow,</p> <p>7 correct?</p> <p>8 MR. NICHOLAS: Same</p> <p>9 objection.</p> <p>10 THE WITNESS: It's the</p> <p>11 obligations of the requirements of</p> <p>12 the Code of Federal Regulations.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. And specifically, that's The</p> <p>15 Controlled Substances Act, correct?</p> <p>16 A. The regulations from the</p> <p>17 act, correct.</p> <p>18 Q. So The Controlled Substances</p> <p>19 Act and the regulations that follow,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know what a duty to</p> <p>23 maintain effective controls is?</p> <p>24 MR. NICHOLAS: Object to the</p>
<p style="text-align: right;">Page 23</p> <p>1 to that as well.</p> <p>2 Do you understand that?</p> <p>3 MR. NICHOLAS: Object to the</p> <p>4 form.</p> <p>5 THE WITNESS: I'm not sure</p> <p>6 what you're referring to as</p> <p>7 "duties."</p> <p>8 BY MR. PIFKO:</p> <p>9 Q. Okay. You understand there</p> <p>10 are restrictions on what you can do as an</p> <p>11 entity selling controlled substances,</p> <p>12 correct?</p> <p>13 A. There's requirements that we</p> <p>14 follow. I don't know if I'd refer to</p> <p>15 them as restrictions, but there's</p> <p>16 regulatory requirements that we have to</p> <p>17 adhere to.</p> <p>18 Q. Right. So my question is,</p> <p>19 the ability to sell controlled substances</p> <p>20 also comes with certain obligations,</p> <p>21 correct?</p> <p>22 MR. NICHOLAS: Object to the</p> <p>23 form.</p> <p>24 Go ahead.</p>	<p style="text-align: right;">Page 25</p> <p>1 form.</p> <p>2 THE WITNESS: I'm not sure</p> <p>3 what your question is. We -- I'm</p> <p>4 not sure what your question is.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. Have you heard the phrase,</p> <p>7 "duty to maintain effective controls"?</p> <p>8 A. No.</p> <p>9 Q. You've never heard that term</p> <p>10 before?</p> <p>11 A. No.</p> <p>12 Q. Do you have an understanding</p> <p>13 that under The Controlled Substances Act,</p> <p>14 AmerisourceBergen has a duty to maintain</p> <p>15 effective controls to prevent diversion</p> <p>16 of certain substances?</p> <p>17 A. Yes. We have to maintain</p> <p>18 effective controls from diversion. I</p> <p>19 just don't know duty was included in that</p> <p>20 or not.</p> <p>21 Q. I'll represent to you that</p> <p>22 the word "duty" is in there.</p> <p>23 So you do understand that</p> <p>24 you have an obligation to maintain</p>

<p style="text-align: right;">Page 26</p> <p>1 effective controls as part of your  2 serving as a registrant and selling  3 controlled substances?  4 A. Yes, we have an  5 obligation -- there's a regulatory  6 responsibility to have effective controls  7 to prevent diversion.  8 Q. What's your understanding of  9 what that means?  10 MR. NICHOLAS: Object to the  11 form. I object to the question.  12 It's too big.  13 THE WITNESS: I guess --  14 that's an overarching statement.  15 If you can clarify what  16 instances within the Code of  17 Federal Regulations you're  18 referring to with the effective  19 controls, there's several  20 different areas in there.  21 MR. PIFKO: We're going to  22 have to not have any speaking  23 objections. Saying "too big" is  24 not an objection, and it's</p>	<p style="text-align: right;">Page 28</p> <p>1 MR. PIFKO: Well, if you  2 tell the witness the question is  3 too big and then he responds, I  4 don't know how to answer it, it's  5 too big, then we've got a problem  6 here because you're telling him  7 what to say.  8 Do you understand?  9 MR. NICHOLAS: No, I'm not  10 telling him what to say. I'm  11 making an objection. So why don't  12 you just go ahead?  13 MR. PIFKO: I hope that we  14 can have compliance with the rules  15 here. And understanding that  16 we're going to be doing that, I'm  17 going to proceed.  18 BY MR. PIFKO:  19 Q. You have a duty to maintain  20 effective controls to prevent against  21 diversion, correct?  22 A. Correct.  23 Q. Do you understand what that  24 means?</p>
<p style="text-align: right;">Page 27</p> <p>1 obviously influencing the  2 witness's testimony.  3 So you can state your  4 objection with clarity. You can  5 state form or foundation. But  6 that's all you can do, okay?  7 MR. NICHOLAS: Mark, I  8 appreciate the instruction, but  9 I'm going to have to handle my own  10 objections the way I see fit.  11 MR. PIFKO: If you're going  12 to be coaching the witness  13 throughout the day, we're going to  14 stop the deposition, we're going  15 to seek sanctions and we're going  16 come back here.  17 Do you understand that?  18 MR. NICHOLAS: You can do  19 whatever you think you need to do.  20 I'm not coaching the witness. I'm  21 stating what I think are  22 appropriate objections in the  23 appropriate manner. And you can  24 proceed.</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Yes, I understand what that  2 means.  3 Q. What is your understanding  4 of what that means?  5 A. We have to have effective  6 controls to prevent diversion, both on  7 the physical security operational side,  8 as well as ensuring we only distribute to  9 licensed entities, and a duty to report  10 suspicious orders.  11 Q. You mentioned there, "duty  12 to report suspicious orders."  13 If I refer to that as the  14 "reporting requirement," do you have an  15 understanding of that?  16 A. If you are referring to the  17 regulation that we have to design and  18 operate a system to identify suspicious  19 orders and report those suspicious orders  20 to DEA, yes.  21 Q. Okay. So at various points  22 today we might refer to that as the  23 "reporting requirement."  24 Will you understand that?</p>

<p style="text-align: right;">Page 102</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. Do you have an understanding</p> <p>3 that a drug that has a high potential for</p> <p>4 abuse could cause death to people who</p> <p>5 consume that drug?</p> <p>6 MR. NICHOLAS: Objection.</p> <p>7 Outside the scope.</p> <p>8 THE WITNESS: I don't know.</p> <p>9 I don't know.</p> <p>10 I mean, drugs -- people can</p> <p>11 overdose on drugs, and I'm aware</p> <p>12 of that, yes.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. Do you have an understanding</p> <p>15 that someone is more likely to suffer</p> <p>16 harm from a Schedule II drug than a drug</p> <p>17 that's not a Schedule II drug?</p> <p>18 MR. NICHOLAS: Objection.</p> <p>19 Outside the scope.</p> <p>20 THE WITNESS: I don't know</p> <p>21 that.</p> <p>22 BY MR. PIFKO:</p> <p>23 Q. Let's go back to our duties</p> <p>24 to prevent diversion.</p>	<p style="text-align: right;">Page 104</p> <p>1 Outside the scope.</p> <p>2 THE WITNESS: It calls for a</p> <p>3 conclusion. I don't know that.</p> <p>4 BY MR. PIFKO:</p> <p>5 Q. You don't know either way?</p> <p>6 A. I don't know --</p> <p>7 Q. If AmerisourceBergen does</p> <p>8 not maintain effective controls to</p> <p>9 prevent diversion of Schedule II</p> <p>10 substances, they can be diverted,</p> <p>11 correct?</p> <p>12 MR. NICHOLAS: Object to the</p> <p>13 form. Outside the scope.</p> <p>14 THE WITNESS: Again, if we</p> <p>15 don't adhere to our effective</p> <p>16 controls to prevent diversion,</p> <p>17 yes, diversion could occur.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. Let's discuss some of the</p> <p>20 company's policies and procedures with</p> <p>21 respect to diversion.</p> <p>22 Before we do that, do you</p> <p>23 agree that the laws and regulations with</p> <p>24 respect to preventing diversion remain --</p>
<p style="text-align: right;">Page 103</p> <p>1 You recall discussing that?</p> <p>2 MR. NICHOLAS: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. You agree that</p> <p>7 AmerisourceBergen has a duty to prevent</p> <p>8 diversion of controlled -- I keep messing</p> <p>9 that up.</p> <p>10 You agree that</p> <p>11 AmerisourceBergen has a duty to prevent</p> <p>12 diversion of Schedule II substances?</p> <p>13 MR. NICHOLAS: Object to the</p> <p>14 form. I'm not sure it's within</p> <p>15 the scope either. But I</p> <p>16 definitely object to the form.</p> <p>17 THE WITNESS: We have a duty</p> <p>18 to -- we have an obligation to</p> <p>19 prevent diversion while the drugs</p> <p>20 are under our control.</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. And if you don't carry out</p> <p>23 that duty, diversion can occur, correct?</p> <p>24 MR. NICHOLAS: Objection.</p>	<p style="text-align: right;">Page 105</p> <p>1 have remained unchanged for the last 45</p> <p>2 years?</p> <p>3 MR. NICHOLAS: Object to the</p> <p>4 form. Outside -- definitely</p> <p>5 outside the scope.</p> <p>6 THE WITNESS: The CSA was</p> <p>7 passed in 1970 and in -- the</p> <p>8 federal regulations that regulate</p> <p>9 our responsibilities have not</p> <p>10 changed.</p> <p>11 BY MR. PIFKO:</p> <p>12 Q. So it's your understanding</p> <p>13 that there haven't been changes with</p> <p>14 respect to the duties to prevent</p> <p>15 diversion since the passage of the</p> <p>16 statute?</p> <p>17 MR. NICHOLAS: Object to the</p> <p>18 form. Outside the scope. You're</p> <p>19 asking him a legal question.</p> <p>20 THE WITNESS: The</p> <p>21 regulatory -- the regulations have</p> <p>22 not changed.</p> <p>23 BY MR. PIFKO:</p> <p>24 Q. So AmerisourceBergen has the</p>



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1 same duty under the regulations today as  
2 it did in 1990, correct?  
3 MR. NICHOLAS: Object to the  
4 form. You're asking him a legal  
5 question. Outside the scope.  
6 THE WITNESS: We have a  
7 requirement to have effective  
8 controls to prevent diversion.  
9 BY MR. PIFKO:  
10 Q. And that requirement hasn't  
11 changed since the passage of The  
12 Controlled Substances Act, correct?  
13 MR. NICHOLAS: Object to the  
14 form. Calls for a legal  
15 conclusion. Outside the scope.  
16 THE WITNESS: I'm not aware  
17 if the regulations have changed.  
18 BY MR. PIFKO:  
19 Q. You're familiar with the --  
20 AmerisourceBergen's practices and  
21 procedures under The Controlled  
22 Substances Act going back to the '80s,  
23 correct?  
24 A. The '90s.

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1 Q. Okay. The '90s.  
2 And you testified about the  
3 company's practices with respect to  
4 preventing diversion dating back to the  
5 '90s in connection with the West Virginia  
6 litigation, correct?  
7 MR. NICHOLAS: Objection.  
8 Outside the scope.  
9 Go ahead.  
10 THE WITNESS: I don't  
11 remember, but --  
12 BY MR. PIFKO:  
13 Q. You testified in 2006,  
14 correct?  
15 A. 2006?  
16 Q. '16, sorry.  
17 A. Yes.  
18 Q. In preparing for this  
19 deposition, did you review your  
20 transcript of that proceeding?  
21 A. I looked at it, yes.  
22 Q. When was the last time you  
23 looked at it?  
24 A. A couple of weeks ago.

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1 Q. Sorry, I'm not quite as  
2 organized as I want to be.  
3 From the time you started  
4 with AmerisourceBergen -- let's back up.  
5 You started working for  
6 AmerisourceBergen in the 1990s?  
7 A. January, correct.  
8 Q. Do you remember the exact  
9 date and year?  
10 A. January 2nd, 1990.  
11 Q. Okay. From the time that  
12 you started with AmerisourceBergen until  
13 about 1998, AmerisourceBergen's  
14 monitoring protocol was that every order  
15 that exceeded the threshold was deemed to  
16 be suspicious, correct?  
17 MR. NICHOLAS: Object to the  
18 form. Outside the scope.  
19 THE WITNESS: So when I  
20 started with the company, the  
21 process was a two-step process.  
22 It was an excessive order report  
23 that was produced monthly to send  
24 to DEA, and then we also had a

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1 manual process at the distribution  
2 centers where the order fillers  
3 would identify suspicious orders  
4 and report those.  
5 BY MR. PIFKO:  
6 Q. And the orders were reported  
7 after they were shipped, correct?  
8 MR. NICHOLAS: Object to the  
9 form. Outside the scope.  
10 THE WITNESS: Correct.  
11 BY MR. PIFKO:  
12 Q. Prior to 2007,  
13 AmerisourceBergen's system shipped all  
14 orders at night and reported any orders  
15 that it deemed to be suspicious the next  
16 day, correct?  
17 MR. NICHOLAS: Objection.  
18 Outside the scope.  
19 THE WITNESS: That was the  
20 program that we developed in  
21 conjunction with DEA over a  
22 two-year process, that we tested a  
23 new -- a process of reporting  
24 suspicious orders that we



<p style="text-align: right;">Page 110</p> <p>1 developed with DEA and then worked  2 with them for two years testing  3 the program until they approved  4 the program in '98.  5 BY MR. PIFKO:  6 Q. I'm not asking for  7 approvals, or I didn't ask you the  8 formulation for the policy. I just asked  9 if that was a correct statement about  10 what the practice was.  11 So I'll just -- let's get a  12 clear answer to the question.  13 A. That was the practice that  14 we did in conjunction with DEA's  15 guidance.  16 Q. Just so we have a clear  17 record, the practice was to ship the  18 orders at night, and then the next day  19 any orders that were identified as  20 suspicious were then reported to the DEA;  21 is that correct?  22 A. Correct.  23 Q. Are you familiar with the  24 term "threshold"?</p>	<p style="text-align: right;">Page 112</p> <p>1 to identify an order of interest  2 for further review.  3 BY MR. PIFKO:  4 Q. And so the threshold is the  5 first step in the suspicious order  6 monitoring program, correct?  7 MR. NICHOLAS: Object to the  8 form.  9 THE WITNESS: It is a step.  10 BY MR. PIFKO:  11 Q. Is there a step before the  12 threshold?  13 A. We train our employees at  14 the distribution centers also to be aware  15 of, and train them on suspicious orders.  16 And if they identify a suspicious order,  17 they're to report it.  18 Q. The threshold is a key  19 factor that's used to identify  20 potentially suspicious orders, correct?  21 MR. NICHOLAS: Object to the  22 form.  23 THE WITNESS: It's an  24 identifier that we use</p>
<p style="text-align: right;">Page 111</p> <p>1 A. Yes.  2 Q. That's an attribute of your  3 suspicious order monitoring system,  4 correct?  5 MR. NICHOLAS: Object to the  6 form.  7 THE WITNESS: You need to  8 put it into context of time,  9 because the program has been  10 enhanced over the years.  11 BY MR. PIFKO:  12 Q. Well, for the time period  13 for which you're here to testify, which  14 ends in 2014, at all times there's been  15 some threshold requirement in the system,  16 correct?  17 A. Correct.  18 Q. Can you tell me what a  19 threshold is?  20 MR. NICHOLAS: Object to the  21 form.  22 THE WITNESS: A threshold is  23 the -- is a trigger that we have  24 put into the program to create --</p>	<p style="text-align: right;">Page 113</p> <p>1 systematically to trigger a  2 potential order of interest.  3 BY MR. PIFKO:  4 Q. What other identifiers does  5 AmerisourceBergen use to identify a  6 potential order of interest?  7 MR. NICHOLAS: What time  8 period? Are we in the same time  9 period?  10 Before you answer, I'd like  11 to know what --  12 MR. PIFKO: That's a  13 fact-related objection. You can't  14 make that objection. You can  15 object vague, and that's all you  16 can say.  17 MR. NICHOLAS: I wasn't  18 objecting. I was asking you to  19 clarify the question.  20 MR. PIFKO: I'm asking the  21 witness a question.  22 THE WITNESS: Can you  23 restate the question, please?  24 MR. PIFKO: Now you've</p>

<p style="text-align: right;">Page 118</p> <p>1 The employees in the cage  2 can identify an order of interest by  3 identifying that order as being of an  4 unusual size, frequency or deviating from  5 the normal pattern?  6 MR. NICHOLAS: Object to the  7 form.  8 THE WITNESS: As I  9 indicated, they are trained, if  10 they identify something of such,  11 they are to report it.  12 BY MR. PIFKO:  13 Q. And the same is true with  14 respect to employees in the vault?  15 A. Correct.  16 MR. NICHOLAS: Object to the  17 form.  18 BY MR. PIFKO:  19 Q. And the other way an order  20 can be identified as an order of interest  21 is if it exceeds a threshold that's  22 defined by AmerisourceBergen?  23 MR. NICHOLAS: Object to the  24 form.</p>	<p style="text-align: right;">Page 120</p> <p>1 BY MR. PIFKO:  2 Q. Let's talk about the  3 pre-2007 period and thresholds within  4 that period.  5 Do you have an understanding  6 of how AmerisourceBergen calculated  7 thresholds before 2007?  8 MR. NICHOLAS: Objection.  9 Outside the scope.  10 These are being answered in  11 his individual capacity.  12 THE WITNESS: In what time  13 period?  14 BY MR. PIFKO:  15 Q. Well, let's start, you  16 testified in West Virginia that there  17 were certain changes made with respect to  18 the calculation of thresholds from the  19 1990s to 2007, correct?  20 MR. NICHOLAS: Same  21 objection.  22 THE WITNESS: There was a  23 change in '98.  24 BY MR. PIFKO:</p>
<p style="text-align: right;">Page 119</p> <p>1 THE WITNESS: There's a  2 threshold that identifies a  3 potentially -- an order of  4 interest, not a suspicious order.  5 And that is -- that is determined  6 by a threshold.  7 BY MR. PIFKO:  8 Q. Are there any other ways an  9 order can be identified as an order of  10 interest?  11 MR. NICHOLAS: Object to the  12 form.  13 I really would appreciate,  14 for the record, some clarity as to  15 the time frame that we're talking  16 about.  17 Are you still unwilling to  18 do that? It seems very -- it  19 seems very plain vanilla.  20 MR. PIFKO: We're talking  21 about the time period for which  22 you were designated, sir.  23 THE WITNESS: Not that I am  24 aware of.</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. Okay. Before 1998, what was  2 the method of calculating a threshold at  3 AmerisourceBergen?  4 MR. NICHOLAS: Same  5 objection. Outside the scope of  6 the 30(b)(6).  7 THE WITNESS: The method of  8 calculating the threshold prior to  9 that was that you would -- all  10 pharmacies would be in one  11 category, hospitals would be in  12 another category. You take all  13 the pharmacies within that  14 category and divide by the number  15 of pharmacies to come up with an  16 average volume for the month per  17 drug category. And then there was  18 a multiplier of three. Any order  19 that was over the threshold amount  20 would be produced an excessive  21 order report.  22 BY MR. PIFKO:  23 Q. But it would still be  24 shipped?</p>

<p style="text-align: right;">Page 122</p> <p>1 A. The product?</p> <p>2 Q. Yes.</p> <p>3 A. Yes.</p> <p>4 Q. After 1998, what was the</p> <p>5 practice with respect to calculating</p> <p>6 thresholds?</p> <p>7 MR. NICHOLAS: Same</p> <p>8 objection. Outside the scope.</p> <p>9 THE WITNESS: So in 1996, we</p> <p>10 worked with DEA, for two years,</p> <p>11 on -- in order to provide DEA with</p> <p>12 more -- we feel, more accurate</p> <p>13 information, that we worked on a</p> <p>14 project to where we would identify</p> <p>15 a customer based upon its own</p> <p>16 purchase history versus all</p> <p>17 pharmacies in one big bucket.</p> <p>18 And then we calculated a</p> <p>19 rolling four-month average of that</p> <p>20 pharmacy's purchases. And then</p> <p>21 created a multiplier of three to</p> <p>22 identify a trigger that would</p> <p>23 identify a suspicious order.</p> <p>24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 124</p> <p>1 that two-year period.</p> <p>2 We continued to make changes</p> <p>3 in the program, and that was the final</p> <p>4 calculation that we came up with.</p> <p>5 Q. And that calculation was</p> <p>6 used from 1998 to 2007?</p> <p>7 A. Yes.</p> <p>8 Q. Something happened in 2007,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. You had an enforcement</p> <p>12 action brought against you by the DEA,</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. The three times multiplier,</p> <p>16 where does that come from? Scratch that</p> <p>17 question for a second.</p> <p>18 You agree that throughout</p> <p>19 the time period we just discussed, from</p> <p>20 the 1990s to 2007, there was always a</p> <p>21 three times multiplier used in connection</p> <p>22 with calculating the threshold, correct?</p> <p>23 A. So for -- so from 1990 to</p> <p>24 '98, the excessive report for ARCOS</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. That practice was in place</p> <p>2 from 1998 to when?</p> <p>3 MR. NICHOLAS: Object to</p> <p>4 the -- objection. Scope. Same</p> <p>5 objection as I've been stating.</p> <p>6 THE WITNESS: So that -- so</p> <p>7 once we got approval from DEA to</p> <p>8 enact that program nationally, we</p> <p>9 tested it for -- with one DEA</p> <p>10 office and then several, and then</p> <p>11 Washington, D.C. approved it for</p> <p>12 national use throughout in 1998.</p> <p>13 And that was the practice</p> <p>14 until 2007.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. So to be clear, from 2007 --</p> <p>17 I'm sorry, from 1998 to 2007, the</p> <p>18 practice was to take a specific</p> <p>19 customer's order history over the prior</p> <p>20 four-month period and then average the</p> <p>21 order history and multiply that by three,</p> <p>22 and that would be its threshold, correct?</p> <p>23 A. That was the agreed-upon</p> <p>24 process through our testing with DEA over</p>	<p style="text-align: right;">Page 125</p> <p>1 items, which would be your Schedule II</p> <p>2 and reportable IIIs had a three times</p> <p>3 multiplier. Non-ARCOS items, I think it</p> <p>4 might have been six; it might have been a</p> <p>5 higher multiplier.</p> <p>6 Our program that we</p> <p>7 implemented in '98 set them all at three.</p> <p>8 Q. And do you know what the</p> <p>9 methodology was in calculating that three</p> <p>10 times multiplier?</p> <p>11 MR. NICHOLAS: Object to the</p> <p>12 form. And same objection, as to</p> <p>13 outside -- as to the scope here of</p> <p>14 all these questions.</p> <p>15 THE WITNESS: So the three</p> <p>16 times multiplier had been in place</p> <p>17 when I came on board in 1990. And</p> <p>18 that was the program that we were</p> <p>19 submitting and working with DEA in</p> <p>20 1990 all the way up to '96.</p> <p>21 And then when we started to</p> <p>22 work on the new program in</p> <p>23 conjunction with DEA and testing</p> <p>24 it and refining it for that</p>

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1 these numbers, 1, 2, 3, 4. And then it  
2 has, Note.  
3 Do you see that?  
4 A. Yes.  
5 Q. And it says, Factor equals  
6 3.  
7 Do you see that?  
8 A. Yes.  
9 Q. Is that what you were  
10 talking about?  
11 A. Yes.  
12 Q. And you worked with the task  
13 force that was responsible for coming up  
14 with this manual?  
15 A. I participated on it. I  
16 wasn't the -- the industry could have one  
17 member, but there was a group of people  
18 within the industry.  
19 Q. Did you help in drafting any  
20 of the language that was in the manual?  
21 A. I don't recall.  
22 Q. Do you recall if the DEA  
23 asked you for comment on the final  
24 version of the manual?

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1 A. I don't.  
2 Q. Your work on this task force  
3 was through the Healthcare Distribution  
4 Alliance, which I guess was under a  
5 different name at that time?  
6 A. They had the -- yeah, there  
7 was -- I think there was one member, one  
8 slot on the task force for the  
9 wholesaler. It was through the HDMA at  
10 the time, I believe it was called.  
11 Q. And so the DEA said that the  
12 HDMA could have a member participate on  
13 the task force, and you were the selected  
14 member; is that correct?  
15 A. No.  
16 MR. NICHOLAS: Objection to  
17 the form.  
18 Go ahead.  
19 THE WITNESS: No. No, I was  
20 not. I said I participated. The  
21 group --  
22 BY MR. PIFKO:  
23 Q. There was someone else who  
24 was the HDMA member?

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1 A. There was a designee of one  
2 person. It wasn't me. I wasn't the  
3 one-person designee.  
4 Q. Do you know who that was?  
5 A. I don't.  
6 Q. Do you know what company  
7 they worked for?  
8 A. I want to say it was  
9 Cardinal or McKesson, but I'm not sure.  
10 It wasn't ABC.  
11 Q. Did you work with anyone  
12 from Cardinal or McKesson -- so I asked  
13 you who the designated person was, and  
14 you said maybe it was Cardinal or  
15 McKesson.  
16 Setting aside who the  
17 designated person was, when you were  
18 involved with this task force, did you  
19 work with anyone from McKesson or  
20 Cardinal on the task force?  
21 MR. NICHOLAS: Object to the  
22 form. Scope.  
23 Go ahead.  
24 THE WITNESS: I can't

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1 remember who specifically was  
2 involved.  
3 BY MR. PIFKO:  
4 Q. But you generally feel like  
5 maybe McKesson or Cardinal was involved?  
6 MR. NICHOLAS: Object to the  
7 form.  
8 THE WITNESS: Again, I don't  
9 know exactly who was involved. I  
10 wouldn't be comfortable saying who  
11 exactly that would be.  
12 BY MR. PIFKO:  
13 Q. In 2007, there was a DEA  
14 enforcement action against  
15 AmerisourceBergen, correct?  
16 A. Yes.  
17 - - -  
18 (Whereupon, Amerisource  
19 Bergen-Zimmerman Exhibit-5,  
20 ABDCMDL 00279854-54, was marked  
21 for identification.)  
22 - - -  
23 BY MR. PIFKO:  
24 Q. I'm handing you what is

<p style="text-align: right;">Page 138</p> <p>1 marked as Exhibit-5. This is a document 2 Bates labeled ABDCMDL 00279854 to 65. 3 Have you seen this document 4 before? 5 A. Yes. 6 Q. Can you tell me what this 7 is? 8 A. This is our settlement and 9 release agreement with the DEA for 10 Orlando distribution center. 11 Q. So as a result of the 12 enforcement action with the DEA, this was 13 the agreement that was reached between 14 AmerisourceBergen and the DEA, correct? 15 MR. NICHOLAS: Object to the 16 form. 17 THE WITNESS: This is the 18 agreement, yes, that was made 19 after the order to show cause. 20 BY MR. PIFKO: 21 Q. Was there any money paid, 22 under this agreement, from 23 AmerisourceBergen to the United States 24 government?</p>	<p style="text-align: right;">Page 140</p> <p>1 And they also wanted us to 2 modify our suspicious order 3 monitoring program to stop orders 4 that we believed -- stop orders 5 that could possibly be suspicious 6 and then to any suspicious -- any 7 order we deem suspicious should 8 not be shipped. 9 BY MR. PIFKO: 10 Q. Did AmerisourceBergen agree 11 to do that? 12 A. We modified our program per 13 this agreement, correct. 14 Q. Can we refer to this 15 agreement as the shipping requirement? 16 MR. NICHOLAS: Object to the 17 form. 18 BY MR. PIFKO: 19 Q. If I say "shipping 20 requirement," can we have an 21 understanding that I'm referring to the 22 idea that you're not supposed to ship an 23 order that's deemed to be suspicious? 24 MR. NICHOLAS: I'll object</p>
<p style="text-align: right;">Page 139</p> <p>1 A. No. 2 Q. But as a result of this 3 agreement, AmerisourceBergen changed its 4 suspicious order monitoring program, 5 correct? 6 MR. NICHOLAS: Object to the 7 form. 8 Go ahead. 9 THE WITNESS: It modified 10 the existing program, yes. 11 BY MR. PIFKO: 12 Q. Can you tell me how the 13 agreement modified the existing program? 14 MR. NICHOLAS: Object to the 15 form. 16 THE WITNESS: So through 17 negotiations with DEA and in 18 enhancing our existing order 19 monitoring program that we had in 20 place at the time, DEA wanted us 21 to include a more in-depth due 22 diligence process in addition to 23 ensuring that we only distribute 24 products to licensed individuals.</p>	<p style="text-align: right;">Page 141</p> <p>1 to the form. 2 I want to understand, are 3 you asking the witness if 4 heretofore we can refer to this 5 agreement as the shipping 6 requirement? Because if so, I'd 7 object to that. 8 BY MR. PIFKO: 9 Q. Do you understand the 10 question? 11 A. Do you want to repeat it? 12 Q. All I'm asking is if, for 13 ease of reference, going forward, we can 14 refer to the idea that you don't ship an 15 order that's been identified as 16 suspicious as the shipping requirement? 17 MR. NICHOLAS: I'll object 18 to the form. And the language. 19 THE WITNESS: We never -- 20 the shipping requirement was never 21 discussed in this document and is 22 not a term that we had used in 23 presentations or requirements. 24 We chose, through our work</p>



<p style="text-align: right;">Page 142</p> <p>1 with the DEA, that if we</p> <p>2 defined -- ABC defined an order as</p> <p>3 suspicious, that we would report</p> <p>4 it and would not ship it.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. Did DEA ever tell you that</p> <p>7 there was a -- prior to entering into</p> <p>8 this agreement, did DEA ever tell you</p> <p>9 that an order that's suspicious should</p> <p>10 not be shipped?</p> <p>11 MR. NICHOLAS: Object to the</p> <p>12 form.</p> <p>13 THE WITNESS: Did DEA ever</p> <p>14 tell us? No.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. We talked about this</p> <p>17 Chemical Handler's Manual and how it</p> <p>18 provided guidance on the three times</p> <p>19 threshold requirement, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Did you take any guidance</p> <p>22 from that manual about the idea of not</p> <p>23 shipping an order that's deemed to be</p> <p>24 suspicious?</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. That's good. Thank you.</p> <p>2 A. Do you want me to read the</p> <p>3 whole thing?</p> <p>4 Q. That's all I was asking you</p> <p>5 to read.</p> <p>6 MR. NICHOLAS: You asked him</p> <p>7 to read the whole thing.</p> <p>8 MR. PIFKO: You can read to</p> <p>9 yourself the rest of that</p> <p>10 paragraph, if you please. But all</p> <p>11 I wanted you to read for the</p> <p>12 record was that portion.</p> <p>13 MR. NICHOLAS: You asked</p> <p>14 him, for the record, to read the</p> <p>15 whole paragraph. Are you now</p> <p>16 telling him you don't want him to</p> <p>17 read the whole paragraph?</p> <p>18 MR. PIFKO: You don't need</p> <p>19 to read any more.</p> <p>20 BY MR. PIFKO:</p> <p>21 Q. Did you ever consider</p> <p>22 foregoing some transactions, as a result</p> <p>23 of reading this document?</p> <p>24 MR. NICHOLAS: Object to the</p>
<p style="text-align: right;">Page 143</p> <p>1 MR. NICHOLAS: Object to the</p> <p>2 form. Outside the scope.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MR. PIFKO:</p> <p>5 Q. Let's take a look at that</p> <p>6 manual again. I'd like to direct your</p> <p>7 attention to Page 21 of that document.</p> <p>8 Exhibit-4, for the record.</p> <p>9 Looking at the second full</p> <p>10 paragraph of Page 21, can you read that</p> <p>11 to me?</p> <p>12 A. On Page 21? You want me to</p> <p>13 read it out loud?</p> <p>14 Q. Yes, please.</p> <p>15 A. When a regulated person</p> <p>16 suspects that an order may be intended</p> <p>17 for illicit purposes, good practice</p> <p>18 requires that every reasonable effort be</p> <p>19 made to resolve those suspicions. In</p> <p>20 addition to making the required reports,</p> <p>21 the transaction should not be completed</p> <p>22 until the customer is able to eliminate</p> <p>23 the suspicions. The distributor may have</p> <p>24 to forego some transactions.</p>	<p style="text-align: right;">Page 145</p> <p>1 form. Outside the scope.</p> <p>2 THE WITNESS: No.</p> <p>3 - - -</p> <p>4 (Whereupon, Amerisource</p> <p>5 Bergen-Zimmerman Exhibit-6,</p> <p>6 ABDCMDL 00269683-694, was marked</p> <p>7 for identification.)</p> <p>8 - - -</p> <p>9 BY MR. PIFKO:</p> <p>10 Q. I'm handing you what has</p> <p>11 been marked as Exhibit-6. For the</p> <p>12 record, these are a series of letters</p> <p>13 from the Department of Justice, Bates</p> <p>14 labeled ABDCMDL 00269683 to 694.</p> <p>15 For the record, there's four</p> <p>16 letters in this packet. This is how they</p> <p>17 were produced. They are dated -- the one</p> <p>18 in the back is the earliest, it's on Page</p> <p>19 ABDCMDL 00269691, and it's dated</p> <p>20 September 27th, 2006. And there's</p> <p>21 another one dated February 7th, 2007;</p> <p>22 another one dated December 27th, 2007;</p> <p>23 and another one with a stamp on it, June</p> <p>24 12th, 2012.</p>



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1 on diversion control?

2 MR. NICHOLAS: Objection.

3 These are being answered in his

4 individual capacity.

5 BY MR. PIFKO:

6 Q. To clean that up, all

7 questions on this right now are in the

8 individual capacity. I'll let you know

9 when we're switching gears.

10 A. To provide them update on

11 our regulatory compliance.

12 Q. But you said you don't meet

13 with them regularly about diversion

14 control.

15 So what I was trying to

16 understand was, why this meeting on

17 diversion control at this time?

18 MR. NICHOLAS: Object to the

19 form.

20 Go ahead.

21 THE WITNESS: We were

22 updating them on the diversion

23 control program.

24 BY MR. PIFKO:

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1 Q. You said there's a committee

2 that you -- that you meet with.

3 Is there a name for this

4 committee?

5 A. It's the audit committee.

6 Q. How many members of the

7 board of directors sit on that committee?

8 A. I believe it's four.

9 Q. Do you know which specific

10 individuals?

11 A. The names?

12 Q. Yes.

13 A. Lon Greenberg, David Durkin.

14 And they just changed this last quarter,

15 so I'm not sure if Mike Long is still on

16 the committee or not. Mike Long. And I

17 can't think of the other.

18 Q. Okay. Let's go back to

19 Exhibit-8.

20 I do want to -- for the

21 record to be clear, I'm asking you this

22 as a 30(b)(6) witness.

23 You state here, These

24 requirements -- well, actually, let's

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1 back up.

2 You have a sentence here

3 that, The Controlled Substance Act,

4 passed in 1970, is the statute

5 establishing U.S. drug requirements for

6 the storage and distribution of

7 controlled substances as stipulated in

8 the Code of Federal Regulations and

9 enforced by the Drug Enforcement

10 Administration.

11 Primarily, you must have a

12 DEA distributor registration to

13 distribute controlled substances. You

14 can only distribute controlled substances

15 to a DEA-registered location. You must

16 have adequate controls in place to

17 prevent diversion; cages, vaults, alarms,

18 background checks, et cetera. And, you

19 must have a system to identify suspicious

20 orders and report those orders to DEA

21 when discovered.

22 Do you see that?

23 A. Yes.

24 Q. It says, These requirements

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1 have gone unchanged for the past 45

2 years.

3 Do you see that?

4 A. Yes.

5 Q. Do you agree with that

6 statement? You wrote it.

7 MR. NICHOLAS: Object to the

8 form.

9 THE WITNESS: I did write --

10 yes, I wrote it.

11 BY MR. PIFKO:

12 Q. And you agree with it?

13 MR. NICHOLAS: Object to the

14 form.

15 THE WITNESS: Yes.

16 BY MR. PIFKO:

17 Q. At the bottom here, it says,

18 In 2014, ABC -- and we haven't talked

19 about that on the record, but ABC refers

20 to AmerisourceBergen Corporation,

21 correct?

22 A. Correct.

23 Q. Okay. It says, ABC

24 voluntarily -- and there's more to the

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1       methamphetamine abuse or any other  
2       area.  
3       And in the past, we had a  
4       great working relationship with  
5       the DEA to resolve these issues.  
6       When it was methamphetamine, they  
7       passed a bill, enacted regulations  
8       and requirements, as we talked  
9       about, with the handling.  
10       But in the opioid crisis,  
11       there's no implementation of  
12       bills, there was no -- there was  
13       no input from DEA like they had in  
14       past crises, for the opioid  
15       crisis.  
16       We worked with DEA in 2007.  
17       We felt we built a program that  
18       was, again, I think,  
19       state-of-the-art in the industry.  
20       And that was the program we  
21       implemented.  
22       We shared our program with  
23       all the other industry  
24       memberships. It wasn't -- we were

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1       open about our process. And, you  
2       know, I think that, on itself,  
3       shows the efforts of  
4       AmerisourceBergen.  
5       BY MR. PIFKO:  
6       Q. I'm going to ask this  
7       question two different ways.  
8       First, from -- for the  
9       30(b)(6) period of the deposition, the  
10       time period, are you aware of any  
11       meetings where the company discussed the  
12       opioid crisis and what steps it could  
13       take to improve its diversion control  
14       measures to address those issues?  
15       MR. NICHOLAS: Object to the  
16       form.  
17       THE WITNESS: We  
18       regularly -- the department  
19       regularly meets and discusses our  
20       programs and processes and what we  
21       do at the distribution centers,  
22       but also with this program as  
23       well. And it's open dialogue.  
24       And if there's areas we can

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1       do that to enhance our program, we  
2       do. It's not -- it's not static.  
3       We don't just implement it in 2007  
4       and there's just no changes. It's  
5       a constant.  
6       BY MR. PIFKO:  
7       Q. Right. But I'm asking if  
8       you had a specific discussion about  
9       changing or adding to the program as a  
10       result of issues stemming from the opioid  
11       crisis?  
12       MR. NICHOLAS: Object to the  
13       form. You're arguing.  
14       THE WITNESS: I don't know  
15       if there was a specific meeting  
16       titled exactly how you're stating  
17       it. No, I don't know.  
18       BY MR. PIFKO:  
19       Q. Okay. I told you I would  
20       ask you the question a different way.  
21       Now as an individual -- or  
22       as the chief compliance officer and the  
23       head of the CSRA, are you aware of any  
24       conversations, at any time when you

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1       worked at the company, where there was  
2       discussion of improving diversion control  
3       measures specifically in response to the  
4       opioid crisis?  
5       MR. NICHOLAS: Object to the  
6       form.  
7       THE WITNESS: As I  
8       previously stated, there is always  
9       discussions about our program and  
10       our processes, not just with the  
11       suspicious order monitoring but  
12       how we handled things across the  
13       scope of the distribution center  
14       and all of our requirements.  
15       So you're asking me, did  
16       have -- can I point to one  
17       specific meeting? Not that I'm  
18       aware of. But it was a topic that  
19       we generally discussed.  
20       VIDEO TECHNICIAN: Going off  
21       the record. 2:01 p.m.  
22       - - -  
23       (Whereupon, a brief recess  
24       was taken.)

<p style="text-align: right;">Page 302</p> <p>1 THE WITNESS: I'm not going  2 to answer a hypothetical.  3 You're throwing, if somebody  4 did X, would we do Y? I'm just  5 not in a position to make those  6 kinds of statements.  7 BY MR. PIFKO:  8 Q. So it wouldn't bother you if  9 a company was coming to you to circumvent  10 a competitor's controlled substances  11 requirements?  12 MR. NICHOLAS: Object to the  13 form. Asked and answered.  14 Mischaracterizes the testimony.  15 Probably way outside the scope of  16 the 30(b)(6) as well.  17 THE WITNESS: Again, you're  18 giving me a hypothetical set of  19 circumstances and you want me to  20 give you an answer. And I can't,  21 because I don't know the -- all  22 the -- whatever else you're  23 including in your hypothetical.  24 - - -</p>	<p style="text-align: right;">Page 304</p> <p>1 e-mail?  2 A. I don't.  3 Q. Do you have any reason to  4 believe this is not a true and correct  5 copy of an e-mail that you received?  6 A. No, I don't doubt that.  7 Q. We did talk about the HDMA a  8 little bit earlier.  9 Did you serve -- did you  10 serve, in any capacity, on any committee  11 or board or group within the HDMA?  12 A. At some point, I was on the  13 regulatory affairs committee. And now  14 I'm on the public -- I think they call it  15 the public policy committee.  16 Q. Do you believe that you were  17 on the regulatory affairs committee at  18 around the time this e-mail was sent in  19 September of 2007?  20 A. Could have been, yes.  21 Q. Do you recall what your  22 responsibilities were as a member of the  23 regulatory affairs committee?  24 A. As a member, I mean, we</p>
<p style="text-align: right;">Page 303</p> <p>1 (Whereupon, Amerisource  2 Bergen-Zimmerman Exhibit-11,  3 CAH_MDL_PRIORPROD_DEA_07_00880890-  4 92, was marked for  5 identification.)  6 - - -  7 BY MR. PIFKO:  8 Q. I'm handing you what is  9 marked as Exhibit-11.  10 It's a document produced by  11 Cardinal Health in this matter, which we,  12 under the protective order, obtained  13 prior approval to use it in this  14 deposition. It's Bates labeled  15 CAH_MDL_PRIORPROD_DEA07_00880890 to 92.  16 It's an e-mail at the top  17 from Steve Reardon, dated September 11,  18 2007, to Mr. Zimmerman. The subject is,  19 Summary of September 7th meeting with DEA  20 and attachments.  21 Let me know when you're done  22 reviewing it.  23 A. Okay.  24 Q. Do you recall receiving this</p>	<p style="text-align: right;">Page 305</p> <p>1 would talk about regulatory issues facing  2 wholesalers.  3 Q. Regulatory issues concerning  4 The Controlled Substances Act; is that  5 correct?  6 A. It could be a whole host of  7 things. It could be destruction. It  8 wasn't only for controlled substances.  9 Anything involving wholesale distribution  10 in the healthcare chain.  11 Q. But that could include  12 controlled substances?  13 A. Yes.  14 Q. Okay. How about diversion  15 control, would that include that?  16 A. Yes.  17 Q. Do you recall HDMA setting  18 up a meeting with members of the DEA  19 around this time in 2007?  20 A. I don't.  21 Q. This is around the time of  22 some of the Dear Registrant letters.  23 Do you agree?  24 A. Yes. Yes.</p>

<p style="text-align: right;">Page 306</p> <p>1 Q. Do you recall there being  2 more activity between members of the  3 industry and DEA at that time?  4 A. As I previously stated, I  5 mean, when I started, we met with DEA  6 every six months and it was a regular  7 activity. And then with the training  8 program, we met with them a lot more;  9 there was a lot more communication.  10 In 2007, this came shortly  11 after -- this is probably within weeks  12 after we got our distribution center back  13 and implemented our new program. So  14 there was a lot of activity on this  15 subject matter.  16 Q. Do you know why the HDMA  17 would have been having a meeting with the  18 DEA at this time?  19 MR. NICHOLAS: Object to the  20 form.  21 THE WITNESS: As I  22 indicated, at that time, they  23 would meet regularly with them; if  24 not every six months, every year.</p>	<p style="text-align: right;">Page 308</p> <p>1 one in years. People on my staff attend  2 them.  3 Q. When do you recall having  4 last attended one?  5 A. It may have been 2009. I am  6 not sure if I attended one in 2011. But  7 I know I haven't attended one for the  8 last, you know, years.  9 Q. You've always -- someone  10 from Amerisource has always been sent to  11 one of these conferences?  12 A. Usually, yes.  13 Q. And do they continue to this  14 day?  15 A. Yes.  16 Q. Do you know if there was one  17 in 2016?  18 A. I don't know if it's 2016 or  19 2017, but they have them every two years.  20 Q. Okay. Does anyone take  21 notes at these meetings?  22 A. I don't know if HDA as --  23 does that or not. I don't know.  24 Q. Do you direct any of your</p>
<p style="text-align: right;">Page 307</p> <p>1 I don't know if this is a regular  2 meeting that they have to discuss  3 issues with distributors or  4 distributors wanting  5 clarification.  6 I'm not really sure what the  7 nexus of this meeting was about.  8 BY MR. PIFKO:  9 Q. Did you ever attend DEA  10 conferences?  11 A. Yes.  12 Q. How often does the DEA put  13 on conferences?  14 A. I believe every other year  15 for distributors, and then the other  16 years pharmacy practitioners. I'm not  17 positive about that.  18 But I know our meetings  19 are -- usually every two years, DEA will  20 have an industry meeting for  21 distributors.  22 Q. Do you always attend those?  23 A. I attended a lot of them  24 earlier on. I probably haven't attended</p>	<p style="text-align: right;">Page 309</p> <p>1 staff members to take notes of the  2 meetings if you don't attend?  3 A. They would -- I would assume  4 they would take notes. DEA usually  5 provides the slides that they produce at  6 the industry conferences. I'm not sure  7 if they put them on their website -- I'm  8 not sure if they put them on their  9 website or not.  10 Q. Do you discuss the  11 presentations or the conferences with  12 other members of the HDMA?  13 A. Do we discuss the DEA  14 conferences with HDMA members? Most of  15 them are usually there. I shouldn't say  16 all of them, but a lot of the members are  17 there at the DEA conference.  18 Q. So you meet with each other  19 while you're at these conferences?  20 You're there together?  21 A. Yes.  22 Q. Do you discuss diversion  23 control while you're at these  24 conferences?</p>

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1 MR. NICHOLAS: I'm going to  
2 just object to the questions, only  
3 to the extent that the witness  
4 said he hasn't been to one of  
5 these conferences himself since  
6 2009 or maybe 2011.  
7 So I want to make sure the  
8 record is clear that we're, you  
9 know -- he's not talking about --  
10 he can only talk about what he can  
11 talk about.  
12 Go ahead.  
13 THE WITNESS: Years back,  
14 yeah, we would talk about  
15 regulatory issues or how we do  
16 things or, you know, what -- those  
17 type of things.  
18 BY MR. PIFKO:  
19 Q. Is there a meeting through  
20 the HDMA, after these conferences, where  
21 the members get together and discuss what  
22 was said at the conference and their  
23 views on the information that the DEA  
24 might have shared at the conference?

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1 MR. NICHOLAS: Same  
2 objection for the same reason.  
3 THE WITNESS: My  
4 recollection was that, you know,  
5 there would be discussions prior  
6 to the meetings if there's  
7 questions that we wanted to bring  
8 up, as an industry.  
9 I don't recall if there was  
10 a structured debrief or anything  
11 like that after.  
12 BY MR. PIFKO:  
13 Q. Let's look back at  
14 Exhibit-11.  
15 It says here -- well, first,  
16 do you know who Brian Cherico is?  
17 A. I'm not familiar with Brian.  
18 Q. How about Steve Reardon?  
19 A. Yes.  
20 Q. Who is Steve Reardon?  
21 A. He was -- I don't know if  
22 he's director or senior director or vice  
23 president of regulatory. I've known him  
24 for quite some time.

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1 Q. Do you know if he still  
2 works at Cardinal Health?  
3 A. He does not.  
4 Q. Does he work for another  
5 distributor, do you know?  
6 A. He's retired.  
7 Q. How about Anita Ducca, do  
8 you know who that is?  
9 A. I believe -- yes, I do.  
10 Q. Who is she?  
11 A. I believe she's vice  
12 president of regulatory affairs for HDMA.  
13 Q. So then Brian sends this to  
14 Steve Reardon, and says, Steve, pasted  
15 below please find the summary of HDMA's  
16 meeting with the DEA last Friday. Please  
17 let me know if you need anything else.  
18 Do you see that?  
19 A. Yes.  
20 Q. And then it's got a summary  
21 of the meeting here.  
22 It says, Key takeaways from  
23 the meeting were -- do you see where that  
24 is?

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1 A. Yes.  
2 Q. DEA's policy was to expect  
3 more than just reporting suspicious  
4 orders. If there was a suspicious order,  
5 the distributor should either stop the  
6 delivery or should evaluate the customer  
7 further before delivering it.  
8 Do you see that?  
9 A. Yes.  
10 Q. Did you have an  
11 understanding, at that time, that that  
12 was DEA's position?  
13 A. Yes. This was the program  
14 that we had just negotiated.  
15 Q. It says, Simply complying  
16 with the suspicious orders regulatory  
17 requirement does not mean, in the  
18 agency's view, that the registrant is  
19 maintaining an effective program to  
20 detect and prevent diversion.  
21 Do you see that?  
22 A. Yes.  
23 Q. Did you have an  
24 understanding that that was the DEA's



<p style="text-align: right;">Page 326</p> <p>1 A. I don't know. I don't know.  2 Q. Well after 2007?  3 A. I don't know. After 2007,  4 we were getting 590s on existing  5 customers, as we were building our  6 program.  7 Q. I'm just asking about this  8 process that you said, at some point, you  9 undertook an effort to get it from  10 existing customers, just going through  11 and getting them, regardless of whether  12 there was an incident.  13 And I'm just trying to  14 understand --  15 A. And I don't know --  16 Q. -- about when that happened.  17 A. -- when that happened. I  18 don't know.  19 Q. Do you recall taking any  20 action, as a result of receiving this  21 e-mail describing the DEA's position on  22 the issues we just discussed?  23 MR. NICHOLAS: Object to the  24 form.</p>	<p style="text-align: right;">Page 328</p> <p>1 (Whereupon, a brief recess  2 was taken.)  3 - - -  4 VIDEO TECHNICIAN: We're  5 back on record at 3:26 p.m.  6 - - -  7 (Whereupon, a discussion off  8 the record occurred.)  9 - - -  10 (Whereupon, Amerisource  11 Bergen-Zimmerman Exhibit-12,  12 MNKT1_0000291614-1620, was marked  13 for identification.)  14 - - -  15 BY MR. PIFKO:  16 Q. I've just handed you what's  17 marked as Exhibit-12. It's a document  18 Bates labeled MNKT1_0000291614 through --  19 MR. CLUFF: This is another  20 one --  21 BY MR. PIFKO:  22 Q. -- 1620.  23 MR. CLUFF: -- where we  24 obtained permission from</p>
<p style="text-align: right;">Page 327</p> <p>1 THE WITNESS: I'm not sure  2 what action -- I don't recall  3 getting the e-mail, so I don't  4 recall reading the e-mail and then  5 any action.  6 This is two weeks after we  7 put our program in place, which is  8 pretty much the points that  9 they're hitting on.  10 And I think this is in  11 September. And I spoke at their  12 conference, I think it was  13 November, and covered pretty much  14 these same points. So our program  15 was already meeting these  16 requirements.  17 MR. NICHOLAS: Mark before  18 you go to another document, it's  19 been two hours. Can we take a  20 break?  21 MR. PIFKO: Sure.  22 VIDEO TECHNICIAN: Going off  23 the record. 3:05 p.m.  24 - - -</p>	<p style="text-align: right;">Page 329</p> <p>1 Mallinckrodt's counsel prior to  2 its use today.  3 MR. NICHOLAS: Okay.  4 BY MR. PIFKO:  5 Q. Could you take a minute to  6 take a look at this document, please?  7 A. Yes.  8 Q. Let me know when you're  9 done.  10 I was only going to ask you  11 about a couple of things on here, in the  12 interest of time. Feel free to look at  13 it, but I can direct you to the couple of  14 questions.  15 Have you seen this document  16 before?  17 A. I don't recall seeing it  18 before.  19 Q. It says, HDMA, DMC expo,  20 2011.  21 Do you know what an HDMA,  22 DMC expo is?  23 A. HDMA has an annual  24 management conference, I'm assuming</p>



<p style="text-align: right;">Page 330</p> <p>1 that's what they're referring to.</p> <p>2 Q. When you were on -- you've</p> <p>3 been -- you've had a role with respect to</p> <p>4 the HDMA for a long time now, right?</p> <p>5 You've had different roles.</p> <p>6 I think -- I forget, but you</p> <p>7 were on one committee and then you're on</p> <p>8 some other committee now, right?</p> <p>9 A. That's correct.</p> <p>10 Q. So you've always had an</p> <p>11 affiliation with the HDMA?</p> <p>12 A. Yes.</p> <p>13 Q. Have you attended this</p> <p>14 conference in the past?</p> <p>15 A. I have.</p> <p>16 Q. Do you believe you attended</p> <p>17 this one?</p> <p>18 A. I may have. It's like with</p> <p>19 the other one, I don't -- I haven't</p> <p>20 attended them the last -- for years. I</p> <p>21 just don't know when -- when I stopped</p> <p>22 attending.</p> <p>23 Q. You see at the top here, it</p> <p>24 says, Attendees included</p>	<p style="text-align: right;">Page 332</p> <p>1 interacted with before?</p> <p>2 A. I have.</p> <p>3 Q. It says she's chief policy</p> <p>4 and liaison, Drug Enforcement</p> <p>5 Administration.</p> <p>6 A. Correct.</p> <p>7 Q. What did she do, as far as</p> <p>8 your interactions with her?</p> <p>9 A. She would be one, if we had</p> <p>10 a policy question or a process question,</p> <p>11 that we would either write to her or call</p> <p>12 her.</p> <p>13 Q. It says here, Cathy gave a</p> <p>14 brief overview of hot topics current</p> <p>15 within the DEA.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. In conferences -- in HDMA</p> <p>19 conferences you do remember attending, do</p> <p>20 you remember the DEA presenting current</p> <p>21 topics of interest to the members of the</p> <p>22 industry at these conferences?</p> <p>23 A. Yes. There was usually a</p> <p>24 segment that DEA presented at.</p>
<p style="text-align: right;">Page 331</p> <p>1 AmerisourceBergen, Cardinal, H.D. Smith,</p> <p>2 McKesson, Lilly, Johnson &amp; Johnson,</p> <p>3 Purdue, Sanofi, Aventis, AmeriCares and</p> <p>4 many more.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. So you believe you would</p> <p>8 always send someone to these conferences</p> <p>9 if you didn't attend yourself?</p> <p>10 A. Yes.</p> <p>11 Q. I just want to know, I want</p> <p>12 to ask you about your familiarity with</p> <p>13 some of the topics that were discussed</p> <p>14 here.</p> <p>15 This is -- the notes here</p> <p>16 are about a specific DEA session that</p> <p>17 occurred on March 7th at this conference.</p> <p>18 Do you see that just on the</p> <p>19 first page at the top?</p> <p>20 A. Yes. ^^</p> <p>21 Q. Do you know who Cathy</p> <p>22 Gallagher is?</p> <p>23 A. I do.</p> <p>24 Q. Is that someone you've</p>	<p style="text-align: right;">Page 333</p> <p>1 Q. One of these, if you scroll</p> <p>2 way down to the bottom,</p> <p>3 second-to-the-last bullet point, Increase</p> <p>4 of ER visits are 97 percent contributable</p> <p>5 to pharmaceuticals; opioids are the most</p> <p>6 frequent.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall that being a</p> <p>10 topic of discussion within the industry</p> <p>11 in 2011?</p> <p>12 MR. NICHOLAS: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: No.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. Do you recall discussing</p> <p>17 that with anyone at the HDMA at any</p> <p>18 point?</p> <p>19 A. I don't recall discussions</p> <p>20 regarding emergency room visits, no.</p> <p>21 Q. Do you have any reason to</p> <p>22 dispute this fact?</p> <p>23 MR. NICHOLAS: Object to the</p> <p>24 form.</p>

<p style="text-align: right;">Page 458</p> <p>1 distribution centers, their  2 customer base.  3 So part of our negotiations  4 with DEA, in 2007, is they wanted  5 to make sure that the distribution  6 centers had an understanding of  7 the customers that they were  8 servicing as well.  9 And that was what the  10 training for the responsible  11 person in charge consisted of.  12 And that's what they're referring  13 to.  14 So DOD accounts, this is in  15 the height of the Iraq War, and we  16 didn't want to be not holding up  17 orders to the DOD at this time.  18 So if they came through at night  19 and it wasn't something -- you  20 know, it wasn't suspicious, then  21 they had the ability to release  22 that order.  23 BY MR. PIFKO:  24 Q. How about chain or grocery</p>	<p style="text-align: right;">Page 460</p> <p>1 - - -  2 BY MR. PIFKO:  3 Q. I'm handing you what has  4 been marked as Exhibit-19. It's a  5 document Bates labeled ABDCMDL 00002405  6 through 2418.  7 Take your time to review it,  8 but, again, I just have some questions  9 about specific areas in here.  10 Let me know when you're  11 ready.  12 A. Okay.  13 Q. Are you ready?  14 This document is titled,  15 Order Monitoring Program, OMP, Setting  16 the Record Straight.  17 Do you see that?  18 A. Yes.  19 Q. And it's talking about the  20 difference between the non-SAP, or S-A-P,  21 and the post-SAP system.  22 Can you explain what that is  23 about?  24 A. So we moved -- SAP is an</p>
<p style="text-align: right;">Page 459</p> <p>1 customers?  2 A. It was all depending upon  3 their knowledge of the customer that they  4 were servicing from the distribution  5 center day in and day out.  6 And these were all things we  7 were discussing with the DEA when we were  8 talking about holding -- because, again,  9 keep in mind, before 2007, orders were  10 reported after the fact. So DEA -- if  11 DOD or Cleveland Clinic placed an order  12 for medication that they needed the very  13 next day, they would get it; and if it  14 was suspicious, we would report it.  15 With this the new program,  16 now you could be impacting patient care  17 at a hospital, surgery center or DOD, in  18 the event that in the middle of the night  19 they had to release that order.  20 - - -  21 (Whereupon, Amerisource  22 Bergen-Zimmerman Exhibit-19,  23 ABDCMDL 00002405-2418, was marked  24 for identification.)</p>	<p style="text-align: right;">Page 461</p> <p>1 operating platform that a lot of  2 manufacturers operate on, and we moved to  3 that operating platform.  4 So this is a move from the  5 old operating platform for the company to  6 the new SAP operating platform.  7 Q. And prior to the SAP system,  8 the system you employed was called STAR?  9 A. I believe so.  10 Q. I want to direct your  11 attention to Page 5 of the document.  12 That's 2409.  13 Let me know when you're  14 there.  15 A. Yes.  16 Q. Frequently asked questions.  17 Do you see that?  18 A. Yes.  19 Q. These are questions that a  20 customer might ask?  21 A. No. These are to the  22 distribution centers.  23 Q. Okay. By the way, have you  24 seen this document before?</p>